APPEAL NO. 031227
FILED JUNE 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 10, 2003, with the record closing on April 14, 2003. The record was held open to allow the parties an opportunity to negotiate an agreement. The hearing officer resolved the disputed issues by deciding that on November 2, 2002, the appellant (claimant) did not sustain a compensable injury and the claimant has not had disability. The claimant appealed, disputing the determinations and arguing that the hearing officer was biased, and failed to review the medical evidence from her treating doctor. The claimant attached some of the exhibits offered and admitted at the CCH to her appeal, as well as correspondence from the carrier dated April 11, 2003, which detailed a settlement offer from the carrier. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

In deciding whether the hearing officer's decision is sufficiently supported by the evidence, we will only consider the evidence admitted at the hearing. We will not generally consider evidence not submitted into the record and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through a lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). With this in mind, and after reviewing the new evidence attached to the claimant's appeal, we find that it does not constitute new evidence which requires consideration for the first time on appeal. We note that the remainder of the exhibits attached to the claimant's appeal were admitted into evidence at the CCH.

Section 406.031(a) of the 1989 Act provides that an employer's insurance carrier is liable for compensation if the injury arises out of the course and scope of employment. Certain injuries, however, are expressly excluded from coverage. These include an injury caused by the employee's willful attempt to injure himself or to unlawfully injure another person. Section 406.032(1)(B). Whether a claimant was acting in the course and scope of his employment when he received an injury is a question of fact. Orozco v. Texas General Indemnity Co., 611 S.W.2d 724 (Tex. Civ. App.-El Paso 1981, no writ). In the present case, there was evidence that the claimant

had already "clocked out" of work and was preparing an order for herself when she got into a physical altercation with a coworker.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The claimant argued that the hearing officer failed to review the medical records of her treating doctor. We note that the hearing officer is not required to detail all of the evidence in the decision and order. *See* Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993. Nothing in our review indicates that all of the claimant's evidence was not fully considered by the hearing officer. The hearing officer specifically noted that the claimant's treating doctor took her off work beginning November 11, 2002. With regard to the claimant's assertion on appeal that the hearing officer was biased, nothing in our review of the record substantiates this assertion.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TX 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

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Veronica Lopez-Ruberto
Appeals Judge